

**CONTRACT NO: 03-045**

**EFFECTIVE DATE: May \_\_, 2003**

**by and between**

**San Bernardino Associated Governments/San Bernardino  
County Transportation Authority**

**and**

**TBD**

**To**

**Provide Environmental Services**

**for**

**Interstate 215 (I-215) South Project**

**in the**

**Cities of Riverside, Grand Terrace, Colton, and  
San Bernardino, California**

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**CONTRACT**  
**FOR**  
**ENVIRONMENTAL SERVICES**

This Contract, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2003, by the firm of \_\_\_\_\_  
(hereinafter called CONSULTANT) whose address is:

and San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereinafter  
called SANBAG) whose address is:

472 North Arrowhead Avenue  
San Bernardino, California 92401

Whereas, SANBAG desires CONSULTANT to perform certain technical services as hereinafter  
described and CONSULTANT desires to do so for the compensation and in accordance with the terms  
and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

**Article 1      Description of Services**

CONSULTANT agrees to perform Services set forth in Attachment "A", in accordance  
with high professional engineering and land surveying standards which are generally  
accepted in the State of California, in accordance with the terms and conditions expressed  
herein and in the sequence, time, and manner defined therein. The word "Services," as  
used herein, includes without limitation, the performance, fulfillment and discharge by  
CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by  
CONSULTANT hereunder; and the Services performed hereunder shall be completed to  
the satisfaction of SANBAG, with their satisfaction being based on prevailing engineering  
standards.

**Article 2      Performance Schedule and Force Majeure**

- 2.1      The Period of Performance by CONSULTANT under this Contract shall  
commence on \_\_\_\_\_ and shall continue in effect for five (5) years or until  
work is completed.
- 2.2      CONSULTANT shall not be considered in default in the performance of its duties  
and obligations with respect to schedule performance to the extent that the

performance of any obligation is prevented or delayed by Force Majeure. In any event, CONSULTANT shall use its best efforts to minimize any schedule extension or additional cost to SANBAG resulting from such delay. Force Majeure includes, but is not limited to, acts of God or of the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter initiatives, legal actions, changes in law, fires, floods, labor disputes, freight embargoes, unusually severe weather and interference caused by, or failure to act of, SANBAG, SANBAG'S consultants (other than CONSULTANT), or other third parties. In every case, the failure to perform must be completely beyond the control and without the fault or negligence of CONSULTANT.

### **Article 3      Contract Price and Cost Principles**

- 3.1 Full compensation to CONSULTANT for full and complete performance of Services, compliance with all the terms and conditions of this contract, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by SANBAG), the total compensation to CONSULTANT shall not exceed the amounts set forth in 3.2 below.
- 3.2 The total cost for the overall project shall not exceed \$\_\_\_\_\_with a contingency of \$\_\_\_\_\_. Utilization of the contingency is not permitted unless directed in writing by SANBAG Project Manager. Services to be provided under terms of this contract are to be provided on a task order basis and compensated for as set forth in Attachment "B" which is incorporated herein by reference. Task order budgets will be negotiated separately and shall include CONSULTANT'S fee. CONSULTANT'S fee for services is included in the total estimated contract cost and shall be based on a fixed percentage rate, as noted in Attachment "B". CONSULTANT'S fee will be paid by SANBAG on an **earned** basis as set forth in Section 6.5.
- 3.3 CONSULTANT'S overhead rates will be fixed, as agreed upon in Attachment "B" for the duration. The fixed overhead rate will not be subject to adjustment. The maximum salary rate established for this contract is \$60.00 per hour and shall remain at this rate for the duration of this contract. Overtime and premium labor rates are not permitted without prior authorization from SANBAG.
- 3.4 Not used.
- 3.5 The Cost principles set forth in Part 31 of the Federal Acquisition Regulation (FAR) as constituted on the effective date of this contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by amendment of the Contract.

3.5.1 The CONSULTANT agrees to comply with Federal procedures in

accordance with 49 CFR, part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are subject to repayment by CONSULTANT to SANBAG.

3.5.3 Any subcontract, entered into as a result of this contract shall contain all of the provisions of this Section 3.5.

3.6 Any Services provided by the CONSULTANT not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from SANBAG. It shall be CONSULTANT's responsibility to recognize and notify SANBAG when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with Article 12, Changes.

#### **Article 4 Availability of Funds**

This Contract is awarded on the contingency of availability of funds. The obligation of SANBAG is conditioned upon the availability of funds which are allocated and available for the payment of such an obligation. If funds are not allocated and available for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by SANBAG at the end of the period for which funds are available. When SANBAG becomes aware that any portion of Services which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve SANBAG from its obligation to compensate CONSULTANT for Services performed pursuant to this Contract. No penalty shall accrue to SANBAG in the event this provision is exercised.

#### **Article 5 Taxes, Duties, Fees**

Except to the extent expressly provided otherwise elsewhere in this Contract, CONSULTANT shall pay when due, and the compensations set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONSULTANT, and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

#### **Article 6 Invoicing and Payments**

6.1 Except to the extent expressly stated otherwise elsewhere in this Contract, the compensation of CONSULTANT as provided herein shall be payable in monthly

payments, forty-five (45) calendar days after receipt by SANBAG of an invoice prepared in accordance with instructions below.

- 6.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by SANBAG and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four to five week period. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT'S sole expense.
- 6.3 CONSULTANT shall furnish evidence, satisfactory to SANBAG, that all labor and materials furnished and equipment used during the period covered by the invoice have been incurred. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence.
- 6.4 CONSULTANT shall include a statement and release with each invoice, satisfactory to SANBAG, that CONSULTANT has fully performed Services pursuant to this Contract for the period covered, and that all claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 6.5 CONSULTANT shall submit separate progress invoices, within each task order, (marked with SANBAG'S contract and job numbers) to SANBAG each month within fifteen (15) calendar days after the cutoff date. Progress invoices shall include request for payment for Services (including additional Services authorized by SANBAG's contract manager) completed by CONSULTANT during each progress billing period. The cutoff date for CONSULTANT'S progress invoice shall be consistent from each period. Each task order progress payment shall be for cost incurred plus the **earned** fee completed by CONSULTANT, as determined by SANBAG in accordance with the terms of this Contract and approved by SANBAG, as of the working day nearest the mutually agreed cutoff date. Earned fee shall be calculated by multiplying percent complete for the applicable task order by the **prime consultant's direct labor and overhead** for each task order. Payment shall not be construed to be an acceptance of Services.
- 6.6 CONSULTANT shall forfeit the fee portion of the progress payment for the period if CONSULTANT fails to submit an invoice within sixty (60) calendar days after the cutoff date.
- 6.7 CONSULTANT shall forfeit all costs incurred if CONSULTANT fails to submit an invoice within one-hundred twenty (120) calendar days after the cutoff date.

## **Article 7      Documentation and Right of Audit**

CONSULTANT shall keep and maintain all books, papers, records, accounting records including but not limited to all direct and indirect costs allocated to Services, files, accounts, reports, cost proposals with backup data, and all other material relating to Services. Consultant shall upon request, make all such materials available to SANBAG or its designee at any reasonable time during the term of the contract and for three (3) years from the date of final payment to CONSULTANT, for auditing, inspection and copying. CONSULTANT shall insert in each of its subcontracts the above requirement.

## **Article 8      Responsibility of the Engineer**

- 8.1      The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all calculations, drawings, notes and other services furnished by the CONSULTANT under terms of this Contract.
- 8.2      In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, the CONSULTANT shall, as an integral part of its services, employ quality control procedures that identify potential risks and uncertainties related to construction of the project and the services performed by CONSULTANT within the areas of CONSULTANT services and expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the contracted Scope of Services, should the CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk and uncertainties, CONSULTANT shall immediately document such matters and notify SANBAG of said circumstances and related concerns. CONSULTANT shall also similarly notify SANBAG in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds design assumptions and could precipitate a failure. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SANBAG to understand and evaluate the magnitude and effect of the risk and uncertainties involved.

## **Article 9      Reporting Requirements/Deliverables**

All Reports and deliverables shall be submitted in accordance with Attachment "A".

## **Article 10      Permits and Licenses**

CONSULTANT shall (without additional compensation) keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Services.



## **Article 11      Technical Direction**

- 11.1      Performance of Services under this Contract shall be subject to the technical direction of the SANBAG Contract Manager, or his designee, as identified in Attachment "A", Scope of Services, attached to this Contract. The SANBAG Contract manager will identify his designee, in writing to CONSULTANT, with the notice to proceed and subsequently with any changes during the contract period. The term "Technical Direction" is defined to include, without limitation:
  - 11.1.1      Directions to the CONSULTANT which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Services.
  - 11.1.2      Provision of written information to the CONSULTANT which assists in the interpretation of drawings, reports, or technical portions of Service description.
  - 11.1.3      Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the CONSULTANT to SANBAG or Caltrans under the contract.
- 11.2      Technical direction must be within the Scope of Services in the contract. The SANBAG Contract Manager or designee does not have the authority to, and may not, issue any technical direction which:
  - 11.2.1      Constitutes an assignment of additional Services outside the Scope of Services;
  - 11.2.2      Constitutes a change as defined in the contract clause entitled "Changes";
  - 11.2.3      In any manner causes an increase or decrease in the Contract's estimated cost or price or the time required for contract performance;
  - 11.2.4      Changes any of the expressed terms, conditions or specifications of the contract; or
  - 11.2.5      Interferes with the CONSULTANT'S right to perform the terms and conditions of the contract.
  - 11.2.6      A failure of the CONSULTANT and Contract Administrative Manager to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes".

- 11.3 All technical directions shall be issued in writing by the SANBAG Contract Manager or his designee.
- 11.4 The CONSULTANT shall proceed promptly with the performance of technical directions duly issued by the SANBAG Contract Manager or his designee, in the manner prescribed by this article and within his authority under the provisions of this clause. If, in the opinion of the CONSULTANT, any instruction or direction by the SANBAG Contract Manager or his designee, falls within one of the categories defined in 11.2.1 through 11.2.5 above, the CONSULTANT shall not proceed but shall notify the Contract Manager in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contract Manager to modify the contract accordingly. Upon receiving the notification from the CONSULTANT, the Contract Manager shall:
  - 11.4.1 Advise the CONSULTANT in writing within thirty (30) days after receipt of the CONSULTANT'S letter that the technical direction is or is not within the scope of the contract "Changes" clause of the contract;
  - 11.4.2 Advise the CONSULTANT within a reasonable time that SANBAG will or will not issue a written change order.

## **Article 12      Changes**

- 12.1 The Services shall be subject to changes by additions, deletions, or revisions thereto by SANBAG. CONSULTANT will be advised of any such changes by written notification from SANBAG describing the change.
- 12.2 Promptly after such written notification of change is given to CONSULTANT by SANBAG, CONSULTANT and SANBAG will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly. If sufficient funds exist in the contingency, SANBAG may, at its option, provide written direction to CONSULTANT that contingency funds may be used for compensation for the change. If CONSULTANT and SANBAG are unable to agree on the compensation change, the CONSULTANT may make a claim per Article 20, CLAIMS. CONSULTANT shall have no obligation to perform the changes, and shall not be entitled to compensation for Services performed on such changes, prior to the execution of the change order relating to the changes required by SANBAG.
- 12.3 CONSULTANT shall not suspend performance of this Contract during the negotiation of any change order, except as may be directed by SANBAG. CONSULTANT shall perform all changes in accordance with all the terms of this contract.

## **Article 13      Federal and State Mandatory Provisions**

### **13.1      Equal Employment Opportunity/Nondiscrimination**

- 13.1.1      In connection with the execution of this contract, the CONSULTANT shall not discriminate directly or indirectly against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selections of training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the Equal Opportunity clause.
- 13.1.2      The CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applications shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- 13.1.3      The CONSULTANT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the CONSULTANT's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 13.1.4      The CONSULTANT shall comply with all provisions of Executive Order No 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60), and shall permit access to its books, records, and accounts by SANBAG and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 13.1.5      In the event of the CONSULTANT'S noncompliance with the Equal Opportunity clause of this contract or any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR, Part 60).

13.1.6 The CONSULTANT shall include the provisions of paragraphs (13.1.1) through (13.1.6) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 112346 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60), so that such provisions will be binding upon each subcontract or vendor. The CONSULTANT shall take such action with respect to any subcontract or purchase order as SANBAG may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by SANBAG, the CONSULTANT may request SANBAG to enter into such litigation to protect the interests of SANBAG.

13.2 Handicapped Workers

13.2.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Article 14 Conflict of Interest**

- 14.1 The CONSULTANT agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further agrees that in the performance of this Agreement, no person having any such interest shall be employed.
- 14.2 No portion of the funds received by the CONSULTANT under this Agreement shall be used for political activity or to further the election or defeat of any candidate for public office.

**Article 15 Key Personnel**

- 15.1 The personnel specified in 15.2 below are considered to be essential to Services being performed hereunder. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services which are the

responsibility of key personnel to other personnel, the CONSULTANT shall notify SANBAG reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the project. Diversion or reallocation of key personnel shall be subject to written approval by SANBAG. SANBAG also reserves the right to approve proposed substitutions for key personnel.

15.2 Key Personnel are:

## **Article 16 Representations**

CONSULTANT agrees with SANBAG that services supplied by CONSULTANT in performance of this Contract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SANBAG that the same shall conform with high professional and engineering principles and standards which are generally accepted in the State of California.

## **Article 17 Proprietary Rights/Confidentiality**

- 17.1 If, as a part of the Contract, CONSULTANT is required to produce Products, then CONSULTANT, if requested by SANBAG, shall deliver to SANBAG the original of all such Products which shall become the property of SANBAG.
- 17.2 All materials, documents, data or information obtained from SANBAG's data files or any SANBAG medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SANBAG. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SANBAG.
- 17.3 Except as reasonably necessary for the performance of Services, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article 17, PROPRIETARY RIGHTS/CONFIDENTIALITY, which are produced by CONSULTANT for SANBAG in the performance and completion of CONSULTANT'S Services under the Contract, until released in writing by SANBAG, except to the extent such materials and information become a part of public domain information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SANBAG'S name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SANBAG.

- 17.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SANBAG unless otherwise agreed to by CONSULTANT and SANBAG.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of SANBAG, any information obtained by CONSULTANT from or through SANBAG in connection with CONSULTANT's performance of this Contract, unless (a) the information was known to CONSULTANT prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same.

## **Article 18 Terminations**

- 18.1 Termination for Convenience. SANBAG shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of Services and shall preserve Work in progress and completed Work, pending SANBAG'S instruction, and shall turn over such Work in accordance with SANBAG's instructions.
- 18.1.1 CONSULTANT shall deliver to SANBAG, in accordance with SANBAG'S instructions, all Products prepared by CONSULTANT or its subcontracts or furnished to CONSULTANT by SANBAG. Upon such delivery, CONSULTANT may then invoice SANBAG for payment in accordance with the terms hereof.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SANBAG as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.
- 18.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT's field tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress and Products in accordance with SANBAG's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause. In the event CONSULTANT shall file a petition in bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, SANBAG may, without prejudice to any other rights or remedies SANBAG may have, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SANBAG, SANBAG may take possession of the Products and finish Services by whatever method SANBAG may deem expedient. A waiver by SANBAG of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 In the event of termination CONSULTANT shall deliver to SANBAG all finished and unfinished Products prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by SANBAG.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SANBAG, satisfactory in form and content to SANBAG and verified by SANBAG. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

## **Article 19 Stop Work Orders**

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, SANBAG shall have the authority to stop any operations of CONSULTANT or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by CONSULTANT.

## **Article 20 Claims**

CONSULTANT shall give SANBAG written notice within seven (7) days after the happening of any event which CONSULTANT believes may give rise to a claim by CONSULTANT for an increase in the Contract Price or in the scheduled time for performance. Within fourteen (14) days after the happening of such events, CONSULTANT shall supply SANBAG with a statement supporting CONSULTANT'S

claim, which statement shall include CONSULTANT'S detailed estimate of the change in Contract Price and scheduled time occasioned thereby. SANBAG shall not be liable for, and CONSULTANT hereby waives, any claim or potential claim of CONSULTANT of which CONSULTANT knew or should have known and which was not reported by CONSULTANT in accordance with the provisions of this Article. CONSULTANT agrees to continue performance of Services during the time any claim of CONSULTANT hereunder is pending. SANBAG shall not be bound to any adjustments in the Contract Price or scheduled time for CONSULTANT's claim unless expressly agreed to by SANBAG in writing and any such adjustments in the Contract Price so agreed to in writing shall be paid to CONSULTANT by SANBAG. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this Contract.

## **Article 21 Insurance**

In order to accomplish the indemnification herein provided for, but without limiting the indemnification, CONSULTANT shall secure and maintain throughout the term of the contract the following types of insurance with limits as shown:

- 21.1 Professional Liability Insurance coverage in an amount not less than \$1,000,000, per claim and in the aggregate. CONSULTANT shall secure and maintain this Insurance throughout the term of this contract and for a minimum of three (3) years after completion and acceptance of Services by SANBAG.
- 21.2 Workers' Compensation Insurance or state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$250,000 limits, covering all persons providing services on behalf of CONSULTANT.
- 21.3 Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$3,000,000 in the aggregate written on an occurrence form.
- 21.4 Comprehensive Automobile Liability Coverage, including owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.
- 21.5 Proof of Coverage. CONSULTANT shall immediately furnish certificates of insurance to SANBAG evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and Fluor Daniel, Inc. (project administration consultant) as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written



notice to SANBAG, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services.

## **Article 22 Indemnity**

CONSULTANT agrees to indemnify, hold harmless, and defend SANBAG, and their officers, employees (past and present), agents, and representatives including Fluor Daniel, Inc., from and against:

- 22.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by SANBAG of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to SANBAG by CONSULTANT in connection with performance of Services; and
- 22.2 Any claim, cause of action, liability, loss, cost or expense, on account of injury to or death of persons or damage to or loss of property which arises out of or is alleged to arise out of the negligence or wrongful acts of CONSULTANT or its subcontractors, employees, or agents, in the performance of Services, and includes any and all expenses, including attorneys' fees, incurred by SANBAG for legal action to enforce CONSULTANT'S indemnification obligations hereunder.

## **Article 23 Ownership of Drawings and Data**

All drawings, specifications reports and other data developed by CONSULTANT under this agreement shall become the property of SANBAG when prepared, whether delivered to SANBAG or not.

## **Article 24 Subcontracts**

- 24.1 CONSULTANT shall not subcontract performance of all or any portion of Services under this Contract, excepting subcontractors listed in the CONSULTANT'S proposal, without first notifying SANBAG of the intended subcontracting and obtaining SANBAG'S approval in writing of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all lower-tier subcontracts.
- 24.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by SANBAG, CONSULTANT shall furnish SANBAG a copy of the proposed subcontract for SANBAG'S approval of the terms and conditions thereof and shall not execute such subcontract until SANBAG has approved such terms and conditions. SANBAG approval shall not be unreasonably withheld.

- 24.3 Approval by SANBAG of any services to be subcontracted and the subcontractor to perform said services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said services.

## **Article 25 Inspection and Access**

SANBAG shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SANBAG, shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

## **Article 26 Independent Contractor**

CONSULTANT is and shall be at all times an independent CONTRACTOR. Accordingly, all Services provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SANBAG shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SANBAG.

## **Article 27 Precedence**

- 27.1 The Contract documents consist of these General Terms and Conditions and Attachment "A", Scope of Services, Attachment AB, Billing Rate Schedule, CONSULTANT's Statement of Qualifications and SANBAG's Request for Qualifications are incorporated herein by reference.
- 27.2 The following order of precedence shall apply:
- 27.2.1 This Contract, its General Terms and Conditions, and Attachments
  - 27.2.2 CONSULTANT's Statement of Qualifications
  - 27.2.3 SANBAG's Request for Qualifications
- 27.3 In the event of an express conflict between the documents listed in Article 27.2, or between any other documents which are a part of the Contract, CONSULTANT shall notify SANBAG immediately and shall comply with SANBAG's resolution of the conflict.

## **Article 28 Communications and Notices**

- 28.1 Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier. Each such notice shall be sent to the respective party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article 28. A change in address may be made by notifying the other party in writing.

For CONSULTANT:

Name:

Address:

Attn:

Phone:

Fax:

For SANBAG:

Name: San Bernardino Associated Governments  
Address: 444 North Arrowhead Avenue, Suite 203  
San Bernardino, California 92401  
Attn: Mr. Gary W. Moon  
Phone: (909) 889-8611 x153  
Fax: (909) 388-2002

- 28.2 All communications pursuant to or in connection with this Contract shall be marked with SANBAG's contract and job numbers.

## **Article 29 Disputes**

- 29.1 In the event any dispute arises between the parties hereto under or in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the Contract Manager of SANBAG or his duly authorized representative within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of SANBAG. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.
- 29.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

## **Article 30 Gratuities**

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of SANBAG or Fluor Daniel, Inc., gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

## **Article 31 Review and Acceptance**

- 31.1 All Services performed by CONSULTANT shall be subject to periodic review and approval by the representatives of SANBAG at any and all places where such performance may be carried on. Failure of SANBAG to make such review, or to discover defective Work, shall not prejudice the rights of SANBAG at the time of final acceptance. All Services performed by CONSULTANT shall be subject to periodic and final review and acceptance by SANBAG upon completion of all Services.

- 31.2 When Services have been completed and the products have been delivered to SANBAG, CONSULTANT shall so advise SANBAG in writing. SANBAG acceptance shall be based on those provisions set forth in the Scope of Services, Attachment "A" within thirty (30) working days of receipt of such notice, SANBAG shall give CONSULTANT written notice of final acceptance or any Services and Work which have yet to be completed or which are unsatisfactory.
- 31.3 In the event SANBAG does not accept Services or Products as submitted then upon their subsequent completion, CONSULTANT shall again so notify SANBAG, and within the above specified time period SANBAG shall give CONSULTANT written notice of final acceptance or notice that the specified unfinished Services or Products have not yet been completed or are still not satisfactory. In the latter instance, the foregoing procedures with respect to such specified unfinished Services or Products will be repeated. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to SANBAG under this Contract or by law.

#### **Article 32 Safety**

CONSULTANT shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT'S operations in the performance of Services hereunder.

#### **Article 33 Assignment**

CONSULTANT shall not assign this Contract wholly or in Part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SANBAG. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **Article 34 Amendments**

This Contract may only be changed by an amendment duly executed by CONSULTANT and SANBAG except, that changes to the Contract to implement administrative changes such as approved changes in key personnel may be made by administrative amendment signed by CONSULTANT and SANBAG's Contracts Manager or other duly authorized representative.

#### **Article 35 Governing Law and Venue**

This Contract shall be subject to the law and jurisdiction of the State of California. The parties acknowledge and agree that this agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action

or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

## **Article 36      Suspension of Services**

- 36.1      SANBAG may at any time, and from time to time, by written Notice ("Suspension of Work Order") to CONSULTANT, suspend further performance of Services by CONSULTANT. Said Suspension of Services Order shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such Suspension of Work Order, CONSULTANT shall promptly suspend further performance of Services to the extent specified, and during the period of such suspension shall properly care for and protect all Services in progress. Such suspensions shall not exceed more than one hundred twenty (120) consecutive calendar days each, nor aggregate more than one hundred eighty (180) calendar days; and, if they do, CONSULTANT may, if it so elects by notifying SANBAG in writing, consider that this Contract has been terminated for convenience of SANBAG. If the Contract has not been so terminated by CONSULTANT, then SANBAG may at any time withdraw the Suspension of Services Order as to all or part of the suspended Services by written notice to CONSULTANT specifying the effective date and scope of withdrawal, and CONSULTANT shall resume diligent performance of Services for which the suspension is withdrawn on the specified effective date of withdrawal.
- 36.2      If CONSULTANT believes that any such suspension or withdrawal of suspension justifies modification of the contract compensation, CONSULTANT may request additional compensation and CONSULTANT and SANBAG will attempt to negotiate a mutually acceptable change in compensation and amend the Contract accordingly. If CONSULTANT and SANBAG are unable to agree on a change in compensation, CONSULTANT may request adjustments to either the Contract Price or the scheduled time for performance in accordance with Article 20, CLAIMS herein. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such suspension.

## **Article 37      Contingent Fee**

The CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SANBAG has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **Article 38      Location of Performance**

- 38.1      This contract is awarded based upon CONSULTANT'S agreement and statements contained in CONSULTANT'S proposal/qualifications document, that a minimum of 50 % by dollar value of the total value of this contract and all amendments, including Services performed by subconsultants, shall be physically performed in offices located within San Bernardino County.
- 38.2      Consultant shall include a statement on each invoice as to the cumulative amount of all Services to date, by dollar value that has been performed in offices located in San Bernardino County. CONSULTANT project manager shall certify in writing that this percentage is correct to the best of his/her knowledge.
- 38.3      At completion of this contract should CONSULTANT have failed to achieve the percentage agreed upon in Article 38.1, then CONSULTANT shall forfeit the entire fixed fee including any retention. SANBAG shall have the right at its discretion, to deduct the entire amount of the fixed fee from CONSULTANT'S invoices at any time. Actions taken under this article shall not limit or constitute a waiver or abandonment of any rights or remedies available to SANBAG under this Contract or by law.

## **Article 39      Entire Document**

- 39.1      This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.
- 39.2      No agent, employee or representative of SANBAG has any authority to bind SANBAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 39.3      As this Contract was jointly prepared by both parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either party.

**Article 40      Attorney's Fees and Jury Trial Waiver**

- 40.1      CONSULTANT and SANBAG hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either CONSULTANT against SANBAG or SANBAG against CONSULTANT on an matter whatsoever arising out of, or in any way connected with, this agreement, the relationship of CONSULTANT and SANBAG, or any claim of injury or damage, or the enforcement of any remedy under any law, statue, or regulation, emergency or otherwise, now or hereafter in effect, regardless of whether such action or proceeding concerns any contract or tort or other claim. THE PARTIES ACKNOWLEDGE THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO EACH OF THEM TO ENTER INTO THIS AGREEMENT AND THAT THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS JURY TRIAL WAIVER. THE PARTIES FURTHER AGREE THAT EACH OF THEM HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF ITS OWN CHOOSING IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.
- 40.2      If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Article 22, Indemnity.



IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

**San Bernardino Associated Governments**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Dennis Hansberger  
President, SANBAG Board  
of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Rex A. Hinesley  
SANBAG Counsel